

L/ice

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the San Francisco Airport's refusal to comply with California Public Utilities Code section 99152 and 164-B and order to show cause why the Airport should not be ordered to complete a system safety program plan prior to commencement of the Airport's operations of its AirTrain transportation system.

**FILED**  
**PUBLIC UTILITIES**  
**COMMISSION**  
**July 17, 2002**  
**San Francisco Office**  
**I. 02-07-014**

**ORDER INSTITUTING INVESTIGATION**  
**AND ORDER TO SHOW CAUSE**

**SUMMARY**

1. The Commission Rail Transit Safety Section (staff) has been working with management of the San Francisco International Airport's (Airport's) AirTrain "people mover" transportation system with respect to the development and implementation of a "system safety program plan" and regular inspections of AirTrain's track and signal system since October 15, 1998. The Airport is operated on behalf of the City and County of San Francisco by the San Francisco International Airport Commission which has vested the day-to-day operation of the Airport in the Airport Director, Mr. John L. Martin, appointed by the Airport Commission. The Airport's AirTrain is an automated transit system designed to move the public between the Bay Area Rapid Transit trains, rental car services, and Airport parking lots and the Airport's terminals. AirTrain operates without operators in the transit vehicles. These vehicles run on rubber tires within a fixed concrete guideway system restricting lateral movement; the vehicles do not operate on steel rails. This is a relatively new technology within the state, although airports in other states have used a similar system for some years. AirTrain is not regulated by the Federal Transit Administration. No agency other than the Commission provides safety oversight for this AirTrain transit system.

2. Recently, both the Airport's and AirTrain's management has terminated cooperation with staff in preparing AirTrain's system safety program plan and has refused to provide documentation concerning the safety of AirTrain's design, construction and future operations. AirTrain intends to begin passenger operations on or about August 15, 2002. AirTrain's Project Manager, Victor Howe, has advised staff that the gaps in AirTrain's system safety program plan will not be completed prior to commencement of passenger operations. AirTrain's consultant, which was working on preparing the system

safety program plan, has advised staff that AirTrain has directed it not to provide safety documentation to staff.

3. The purposes of the OII are to investigate (a) AirTrain's refusal to provide Commission staff with requested information and documentation, (b) AirTrain's direction to its consultant, PGH Wong Engineering, not to cooperate with staff and (c) AirTrain's refusal to complete and implement a system safety program plan approved by the Commission staff prior to commencement of passenger service. Further, the purpose of the OSC is to ensure effective Commission safety oversight over the design, construction and operation of AirTrain as well as to ensure that a system safety program plan is fully prepared and implemented prior to commencement of AirTrain's passenger operations. Recommendations for improvement of the Commission's safety oversight of AirTrain and the need for the creation of administrative procedures for regulatory enforcement will be considered by the Commission.

### JURISDICTION

4. The California Legislature has delegated safety oversight of public transit guideway systems to the Commission. California Public Utilities Code section 99152 provides that AirTrain is subject to the regulations and orders of the California Public Utilities Commission ("Commission") relating to safety appliances and procedures.

5. California Public Utilities Code section 99152 provides:

Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures.

The commission shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public.

The commission shall develop an oversight program employing safety planning criteria, guidelines, safety

standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways. Existing industry standards shall be used where applicable.

The commission shall enforce the provisions of this section.

### AIRTRAIN

6. The AirTrain, a rubber tired, automated electric powered, public transit guideway will shuttle people throughout the Airport on an elevated fixed concrete guideway system, 24 hours per day, seven days per week. This system includes nine stations and over five miles of elevated guideway on two independent loops around the airport. This system will have the capacity to move over 3,000 passengers per hour on 38 totally automated driverless trains. The vehicles will run in two- to three-car trains. Each car is nine feet three inches in width and 39 ½ feet long and weighs approximately 32,000 lbs. Each car has a total capacity of roughly 40 passengers with luggage carts and 60 passengers without carts.

### NON-COMPLIANCE

7. During the construction of the AirTrain system, staff of the Airport and its consultants worked together with the Commission's staff to develop necessary safety procedures and guidelines for the operation of this public transit guideway system. However, within the last 60 days, the Airport has advised staff that it disputes the Commission's safety jurisdiction over AirTrain. In addition, the Airport further advised that it refuses to complete the drafting and implementation of a "system safety program plan" for this new public transit guideway system.

8. The system safety program plan includes tests, inspections, demonstrations, and other verification methods necessary to determine the compliance of all elements critical to safety requirements and procedures. For example, the system safety program plan includes a hazard identification and resolution process, facility inspection, accident investigation and reporting system, maintenance audits, employee training review,

employee safety program, and a hazardous materials program. The system safety program plan provides the Commission with a fundamental framework to carry out its safety oversight function.

#### ATTACHED DECLARATION

9. Between October 17, 2001, and June 7, 2002, Mr. Dennis Reed and others of staff have met on several occasions with AirTrain management and consultants concerning safety procedure issues, safety tests, production of the system safety program plan, and safety oversight issues. During the period of these meetings, AirTrain had agreed to the production of a draft system safety program plan by June 14, 2002. On June 7, 2002, Mr. Peter Wong, consultant for AirTrain, advised staff that he had been directed by AirTrain not to allow staff to remove copies of any documents from AirTrain's premises and, further, not to provide staff with any documents it has requested. On June 10, 2002, Victor Howe, Project Manager of AirTrain, advised staff that AirTrain would not submit a completed system safety program plan prior to commencement of operations.

#### PRELIMINARY FINDINGS

10. Staff has made a prima facie showing of the Commission's safety oversight over AirTrain and the need for the development and implementation of a final system safety program plan prior to commencement of AirTrain's passenger operations. Further, staff has demonstrated that the Airport, the City and County of San Francisco, the Airport Commission, and the Airport Director, intend to operate the AirTrain transportation system without the approval of the Commission and without the completed development and implementation of a system safety program plan as required by the Commission. The evidence and safety concerns are sufficient to warrant a hearing requiring AirTrain to demonstrate that it has a complete system safety program plan, satisfactory to staff as part of the Commission's safety oversight responsibility, in place before AirTrain commences passenger operations.

ORDER

For good cause shown, as set forth in the declaration attached to this order dated July 17, 2002.

**IT IS ORDERED** that:

1. Investigation 02-07-014 is opened for the purposes of investigating (a) AirTrain's refusal to provide Commission staff with requested information and documentation, (b) AirTrain's direction to its consultant, PGH Wong Engineering, not to provide necessary information requested by staff, (c) AirTrain's refusal to complete and implement a system safety program plan prior to commencement of passenger service, and in addition, to require AirTrain to produce and implement a system safety program plan prior to the commencement of passenger operations.

2. On July 29, 2002, at 10:00 a.m., at 505 Van Ness Avenue, San Francisco, California, the Airport and AirTrain management shall show cause why they should not be ordered to comply with California Public Utilities Code section 99152, by developing and implementing a system safety program plan prior to the commencement of AirTrain's passenger operations, and to comply with all other safety requirements imposed by staff pursuant to section 99152.

3. The Airport, AirTrain management, the City and County of San Francisco, the Airport Commission, the Airport Director, AirTrain's consultants, and any other interested parties, may present evidence and/or argument at the hearing on the order to show cause.

4. This proceeding shall be categorized as an adjudicatory proceeding pursuant to Rule 6(c)(1) of the Commission's Rules of Practice and Procedure.<sup>1</sup> The arguments concerning the legal validity and applicability of Public Utilities Code section 99152 and

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<sup>1</sup> Title 20, California Code of Regulations, § 6(c)(1).

the facts concerning the Commission's safety oversight of the AirTrain transit system, are adjudicatory in nature.

5. All ex parte contacts concerning adjudicatory issues are prohibited. (Rule 7(b).)

6. The need for a hearing is demonstrated by the safety concerns raised by staff's allegations and the Airport's refusal to put in place a system safety program plan prior to the commencement of AirTrain's passenger operations.

7. The Executive Director shall cause a copy of this order to be served upon the Airport's representatives Mara E. Rosales, Airport General Counsel at San Francisco International Airport, International Terminal, 5<sup>th</sup> Floor, P.O. Box 8097, San Francisco, Calif. 94128, Dennis J. Herrera, City Attorney, City and County of San Francisco, 1 Dr. Carlton Goodlet Plaza, San Francisco, Calif. 94102.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

## **PRELIMINARY SCOPING MEMORANDUM**

1. The scope of the issues to be determined in the proceeding shall be (1) whether the Commission has safety jurisdiction over the design, construction, and operations of AirTrain; and (2), in light of the evidence presented in the attached declaration and the evidence which may be adduced at hearing, whether the Airport should be ordered to comply with Public Utilities Code § 99152.

2. A further scoping memo, among other things, will designate a Principal Hearing or Presiding Officer.

3. A prehearing conference will be scheduled at a time and location to be determined by the Principal Hearing or Presiding Officer.

4. The Principal Hearing or Presiding Officer shall rule on the scoping memo and the scheduling of hearings at or after the prehearing conference.



## **DECLARATION OF DENNIS REED**

1. My name is Dennis Reed. I am employed by the California Public Utilities Commission as a Public Utilities Regulatory Analyst. I am assigned to the Rail Transit Safety Section of the Consumer Protection and Safety Division. My duties include monitoring the safety procedures of AirTrain for compliance with Commission orders, rules and regulations. I inspect and conduct investigations under the authority of the Commission and, in some circumstances not relevant here, the Federal Transit Administration. I declare under oath that the following is true and correct. It is based on my personal knowledge, or if based on information not of my personal knowledge, I believe the information to be true and correct. If called as a witness, I could testify competently to the matters contained below.

2. Pursuant to California Public Utilities Code section 99152, AirTrain is a public transit guideway system subject to the safety oversight of the Commission.

3. My experience in the public transit industry has provided me with knowledge of transit operating and engineering equipment, standards, nomenclature and training. I am familiar with the safety standards of public transit systems.

4. On June 2, 1997, James Quinn of the Commission's Legal Division wrote to Thomas L. Kardos, Deputy Director, Bureau of Design and Construction of the San Francisco International Airport, identifying California Public Utilities Code Section 99152, and that the statute required the Commission to develop a safety oversight program for AirTrain and to inspect work on AirTrain during construction.

5. On August 4, 1997, Mr. John L. Ensich, P.E., Transportation Engineer for the Commission wrote to Mr. Howe regarding the existing revision of the Commission's oversight plan for the Airport Rail System (ART).

6. Pursuant to that Commission System Safety Oversight Procedure, on March 1, 1999, PGH Wong Engineering, consultants for AirTrain, submitted a substantial number of documents for staff review.

7. On October 17, 2001, staff was provided an overview of the project by the AirTrain Safety and Security Committee.

8. On December 19, 2001, staff met with AirTrain's Project Manager and AirTrain's consultants to discuss a broad range of safety issues.

9. On January 24, 2002, staff met with AirTrain management to discuss emergency procedures.

10. On February 15, 2002, staff met with AirTrain's consultants, PGH Wong Engineering, to discuss Commission General Orders, witness points, status reports, and Battelle audits.

11. On March 6, 2002, staff met with AirTrain consultants and field test staffers.

12. On March 22, 2002, I witnessed AirTrain switch tests.

13. On April 15, 2002, railroad track and signal inspector staff conducted an inspection of AirTrain's signals and track.

14. Additionally, on April 17, 2002, staff met with AirTrain management and consultants to discuss Commission General Orders 127, 143-B and 164-B, focusing on the continued development of a system safety program plan.

15. On April 26, 2002, I witnessed AirTrain's testing designed to determine whether AirTrain's vehicles would automatically stop at virtual gates following software updates on AirTrain's computer system.

16. On May 6, 2002, I witnessed AirTrain clearance tests to ensure proper clearances between AirTrain vehicles and station platforms and walls.

17. On May 8, 2002, staff met with Airport and AirTrain management and AirTrain consultants to discuss Commission safety oversight jurisdiction. At that meeting, AirTrain asserted that Commission staff had withdrawn its claim of Commission safety jurisdiction under California Public Utilities Code section 99152 contained within Mr. Quinn's June 2, 1997 letter.

18. On May 21, 2002, staff met with AirTrain and its consultants during which

AirTrain agreed to provide the consultant with all the necessary information to complete the system safety program plan by June 1, 2002. Further, milestones were developed for the production of the system safety program plan, including a milestone for AirTrain to provide a draft of the system safety program plan to Commission staff by June 14, 2002. Attached hereto as Attachment A are the Minutes of Meetings for the meeting of AirTrain, its consultants, and staff on May 21, 2002. At page 3 of these Minutes is a reference that “on June 14, 2002, a completed draft of the SSPP [system safety program plan] is due for CPUC review.”

19. On May 29, 2002, staff met with AirTrain and conducted a Commission General Order 95 inspection.

20. On June 3, 2002, staff’s attorney, Patrick S. Berdge, received a letter from Mara Rosales, Airport General Counsel, contending that Mr. Len Hardy, a former Commission transit safety staff person, had withdrawn the Commission’s jurisdictional claim in Mr. Quinn’s letter.

21. On or about June 5, 2002, staff received a letter from AirTrain’s Project Manager stating that he would try to meet the final delivery date for AirTrain’s system safety program plan of June 28, 2002. A copy of that letter dated June 3, 2002, is attached hereto as Attachment B.

22. On or about June 7, 2002, AirTrain’s consultant advised staff that it had not received the necessary information from AirTrain management to complete the system safety program plan.

23. Also, on June 7, 2002, Mr. Peter Wong, consultant for AirTrain, advised staff that he had been directed by AirTrain not to allow staff to remove copies of any documents from AirTrain’s premises and, further, not to provide staff with any documents its requested.

24. On June 10, 2002, the Project Manager of AirTrain, Mr. Victor Howe, advised Mr. Robert L. Strauss of Commission Rail Transit System Section that AirTrain did not intend to provide all parts of the system safety program plan, especially those

parts relating to the Airport and how the Airport will use the system safety program.

25. On June 11, 2002, Mr. Richard Clark, Director, Consumer Protection and Safety Division of the Commission, wrote Ms. Rosales to explain that Mr. Hardy had denied making a statement withdrawing Commission jurisdiction to AirTrain employees. Mr. Clark continued to assert Commission safety oversight jurisdiction over AirTrain.

26. Finally, on June 14, 2002, and June 21, 2002, AirTrain's consultant cancelled meetings with staff concerning the development of AirTrain's system safety program plan.

27. Meetings were rescheduled and took place on July 3, 2002, and July 11, 2002. As in the last meetings, staff was denied the ability to receive copies of documents concerning the system safety program plan (SSPP). Staff advised AirTrain management representatives that while staff approved many of the necessary elements proposed by AirTrain for the SSPP, a number of substantive elements remained unapproved. One of those elements concerned the System Description/Organizational Structure. Staff is also asking that corrections be made regarding the Safety and Security Committee, independent safety audits, and safety coordination. Staff did not approve the Accident/Incident Reporting and Investigation element because AirTrain refuses to report accidents to the Commission. Further, staff believes that AirTrain's operational Rule Book for employees is incomplete. Staff contends that further work is needed on both the Hazardous Materials Program and Drug and Alcohol Abuse Program elements. Finally, staff objected to the Contractor Safety Coordination element as being vague and incomplete.

Executed on \_\_\_\_\_, 2002, at San Francisco, California.

I declare that the foregoing is true and correct under penalty of perjury.

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DENNIS REED

ATTACHMENT A  
TO THE DECLARATION OF DENNIS REED

[AirTrain Consultants' Minutes of Meetings dated May 21, 2002]

ATTACHMENT B  
TO THE DECLARATION OF DENNIS REED

[Letter from Victor Howe to CPUC staff dated June 3, 2002]